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RUEHRG/AMCONSUL RECIFE 7637
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UNCLAS SECTION 01 OF 06 BRASILIA 000130

SIPDIS

SENSITIVE
SIPDIS

DEPT FOR EB/TPP/IPE JENNIFER BOGER
DEPT PASS USPTO
DEPT PASS USTR FOR KATHERINE DUCKWORTH AND JENNIFER CHOE GROVES
USDOC FOR ITA/MAC/OIPR CASSIE PETERS
USDOC FOR ITA/MAC/WH/OLAC/MCAMPOS

E.O. 12958: N/A
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [BR](#)
SUBJECT: BRAZIL: USTR OCR MEETING WITH GOB OFFICIALS

REF: A) State 107819; B) Brasilia 1620; C) Brasilia 680; D) Brasilia 2813 E) Brasilia 2038 F) Page e-mail 1/17/08

11. (SBU) Summary and Introduction: On January 15, Deputy Assistant United States Trade Representative (DAUSTR) Chris Wilson and delegation met privately with Hadil Vianna, Director for Scientific and Technical Affairs (DCT) at the Ministry of External Relations (MRE) and later with members of the GoB's Inter-Ministerial Group on Intellectual Property (GIPI), which Vianna chairs, to discuss USTR's ongoing Special 301 Out-Of-Cycle Review (OCR) of Brazil's IPR practices. Vianna emphasized overall "excellent" USG-GOB relations and said he hoped the IP dialogue would be equally positive. He noted increased Brazilian public awareness of IPR issues, but said many in the GoB do not feel the USG has sufficiently recognized Brazilian IPR efforts. He added that the GoB does not recognize its inclusion on any intellectual property (IP) violators list (such as the Special 301 or the EU's similar listing).

12. (SBU) The meeting was well-attended by representatives of the Inter-Ministerial group (GIPI) and a variety of copyright and patent issues were addressed. Otavio Brandelli, Chief of the Division of Intellectual Property at the MRE, noted a new emphasis by the National Council to Combat Piracy (CNCP) on targeting demand for pirated goods and said CNCP members had not raised internet piracy as an issue. Vianna added that, despite low internet penetration rates, the GoB takes internet piracy seriously, having raised it at the last Internet Governance Forum (IGF) meeting. Brandelli also described a new CNCP legislative proposal that would, among other initiatives, streamline the destruction process of seized contraband. Deputy CNCP Executive Secretary Ana Lucia Soares reported a decrease in demand for pirated goods in the country's lower-income northeastern region. Representatives for the Receita Federal (Brazilian IRS/Customs), the Rodoviaria Federal (Brazilian Federal Highway Patrol), the Brazilian Federal Police and the Ministry of Agriculture reported ongoing modernization and training efforts as well as enforcement activities. All except Rodoviaria reported an increase in contraband seizures. An official from the National Health Vigilance Agency (ANVISA - the Brazilian FDA equivalent) described Brazil's ongoing battle against counterfeit medicine and outlined future ANVISA efforts in this area.

13. (SBU) Regarding U.S. concerns about textbook copying, Marcos Alves de Souza, General Coordinator for Copyrights at the Ministry of Culture, said the GoB is exploring use of a collective management system (including internet sales) or taxes on media and reproductive machines to ensure remuneration of rights holders. A National Institute of Industrial Property (INPI) spokesperson said INPI had increased human resources to address its patent backlog and was implementing the e-MARCAS registration system. Brandelli called the

compulsory licensing of the Merck anti-retroviral drug Stocrin an "unusual event" in Brazilian history that took place after all negotiations had failed, and insisted that the action was TRIPS compliant. An ANVISA representative defended his agency's handling of data package protection. End Summary and Introduction.

14. (SBU) On January 15, Deputy Assistant United States Trade Representative (DAUSTR) Chris Wilson and delegation met privately with Hadil Vianna, Director for Scientific and Technical Affairs (DCT) at the Ministry of External Relations (MRE) prior to meeting with members of the GoB's Inter-Ministerial Group on Intellectual Property (GIPI), which Vianna chairs, to discuss USTR's ongoing Out-Of-Cycle Review (OCR). GIPI includes representatives from the Ministries of Science and Technology; Justice; Health; Culture; Environment; Agriculture; External Relations; Development, Industry and Trade; and a representative of the President's office, Casa Civil, as well as INPI and ANVISA. All GIPI members were represented at the meeting except for the Ministry of the Environment and Casa Civil. (Comment: The large turnout for the meeting appeared to signal a keen GoB interest in dialogue with USTR about GoB IPR enforcement efforts. End Comment.)

Meeting with Hadil Vianna

15. (SBU) Vianna told Wilson he believed that overall relations between the USG and GoB are excellent and that he hoped the IP dialogue would be equally positive. He observed that many in the GoB do not feel the USG has sufficiently recognized its anti-piracy efforts. Vianna added that the GoB does not recognize its inclusion on any IPR violators' list (such as the Special 301 or the EU "Blacklist"), but understands that it is a USG prerogative to maintain such a list. He cautioned that the GoB avoids public discussion on the Special 301 process to prevent creation of a

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detrimental public atmosphere towards IPR.

16. (SBU) Vianna said a large investment of both time and resources in the Brazilian IPR effort had led to an unprecedented increase in public IPR awareness in Brazil, including increased media coverage. In addition, Vianna pointed out that IP issues have appeared in Brazilian soap operas, with the villain portrayed as an IPR violator. During the meeting, he also solicited USG support for the Brazilian candidate for the World Intellectual Property Organization (WIPO) presidency.

17. (SBU) Wilson emphasized to Vianna that the purpose of his visit was to learn more about the GoB intellectual property regime and stated that the GoB was "not on trial" during the OCR process. He referenced the GoB position on IPR in international fora as often at odds with the USG position and signaled USG interest in discussing these issues with the GoB in advance of international meetings in order to enhance communication. In reference to Vianna's call for USG support for the Brazilian WIPO candidate, Wilson relayed that the USG was preparing to consider candidates for the position.

OCR Meeting with GIPI

18. (SBU) Wilson acknowledged to GIPI agency representatives that he realized the Special 301 process as a point of contention, but said his objective was to work on IP issues with the GoB in a spirit of cooperation. He applauded the efforts of the GoB's National Council to Combat Piracy (CNCP) and cited it as an example of a successful public-private partnership that is frequently referenced as an example to other countries.

-- National Council to Combat Piracy (CNCP)

19. (U) Otavio Brandelli, Director of the Division of Intellectual Property at the MRE (a member of CNCP) said CNCP was preparing to move beyond its focus on controlling the supply of pirated goods into a second phase addressing demand. To accomplish this, he said,

CNCP activities will include an intensified GoB anti-piracy consumer educational program, efforts to promote reform of the Brazilian tax system, and cooperation with industry to make authentic products available to consumers at a more reasonable price. CNCP plans to evaluate and revise its National Anti-Piracy Plan beginning in February 2008.

¶10. (SBU) Deputy CNCP Executive Secretary Ana Lucia Soares said that more consumers now understand the link between piracy and organized crime as a result of CNCP educational activity (which is designed to demonstrate the impact of piracy on the Brazilian consumer). She reported a drop in piracy rates in Brazil's lower-income northeastern provinces as a result of stepped-up enforcement and consumer education campaigns. (Note: ConRecife notes that enforcement is highly visible in the press and the local police have complained to PO about a lack of storage space for confiscated media (ref F). End Note.) She also reported that in 2007 the first municipal-level anti-piracy commission was created in Blumenau.

-- Enforcement Activities

¶11. (SBU) Frederico Vasconcellos, Head of the Division on Combating Contraband and Customs Evasion at Receita Federal (Brazilian IRS/Customs) said that the GoB was working on improvements in its customs control strategies, including expansion of international cooperation, increased training for customs officers and additional investment in new equipment and facilities. Receita statistics indicated a 2007 increase in seizures of smuggled goods (pirated items were not listed separately from other contraband). Brazilian legislation now allows for the seizure of buses and vehicles involved in smuggling. He presented photographic evidence of dozens of seized buses and vehicles that were to be donated to Brazilian state and local governments. According to him, smugglers are now seeking alternative routes to the Foz De Iguacu crossing from Paraguay, mostly through the southeast, and the Brazilian authorities have thus far been unable to address this new development.

¶12. (SBU) Jetson da Silva, an official from the Rodoviaria Federal (Brazilian Federal Highway Patrol) said his organization, which oversees 61,000 km of federal highway, has conducted CNCP-assisted anti-piracy interdiction training programs for its officers and held

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educational campaigns in schools. Rodoviaria seizure data indicated a drop in 2007, which the official attributed to use by smugglers of secondary roads not frequented by his organization. According to a Brazilian Federal Police Official, his agency has formulated both a national and international strategic cooperative plan. He said the Federal Police have begun efforts to fight internet piracy, including modernization of outdated equipment and training of a cyber crime unit, and was interested in exchanging technology and information with other countries in this area.

¶13. (SBU) Helinton Rocha, the Ministry of Agriculture's Director of the Department of Intellectual Property and Agriculture Technology discussed Brazil's biosafety and seed laws and described inspection and seizure activities. In 2007, the Ministry conducted 3,157 inspections of soybean seed lots and found 373 questionable lots which resulted in fines on the culpable parties. Out of 606 cotton and corn inspections, 36 were found to be questionable and resulted in penalties assessed on the owners. Fines of up to R\$1.5 million were issued, with an average of R\$250,000.

-- Legislation

¶14. (SBU) Brandelli said proposals included in a new CNCP sponsored bill would, for example, streamline the destruction process of seized contraband. He added that this legislative proposal has been undergoing due process for a number of months and, once done, will be presented to the Brazilian Congress. According to Brandelli, CNCP is also assisting other states with formulation of anti-piracy statutes. (Note: This legislation will also expand vehicle seizure authority and allow law enforcement agencies to retain only samples for use in litigation. It also provides different penalties for individual offenders from those involved in larger operations;

incorporates penalties for software copyright violation into the penal code; and stiffens penalties if pirated goods are imported (see reftel D). End Note.)

-- Counterfeit Medicine

¶15. (SBU) Maristela Figueiredo, Health Regulation and Surveillance Specialist at the National Health Vigilance Agency (ANVISA - the Brazilian FDA equivalent), said counterfeit medicines remained a problem in the country, although to a much lesser extent than in the past. In 1997-98, there were a reported 172 cases of counterfeit medicines; while in 2006-07, there were only 17. Figueiredo noted the sudden increase in counterfeit drugs from 1997-98 led to the passage of a 1998 law providing for stiffer penalties for drug counterfeiters (10-15 years without parole or amnesty plus a fine) and served as the impetus for the creation of ANVISA in 1999. GoB regulations now call for usage of secure drug packaging and a distributors' registry. ANVISA serves as the clearinghouse for information on counterfeit drugs provided by a nationwide notification network of 160 sentinel hospitals (known as Notivisa), and state health vigilance units (VISAs).

¶16. (SBU) According to Figueiredo, future plans to combat counterfeit medicine include closer coordination with Mercosul partners, strengthening legislation, and implementing a more thorough drug registry database that would facilitate tracking counterfeit drugs to the end user. She also cited the need for more training of Federal judges, who often do not take counterfeit drug cases as seriously as illegal drug cases, although both have similar penalties. Figueiredo stated that 130 Federal, State, and Municipal level inspectors had been trained. (Note: Figueiredo later told EconOff that ANVISA has an internal division that trains state and municipal agents to conduct inspections for counterfeit medicines. ANVISA, in conjunction with Receita, has participated in seminars on counterfeit medicines conducted by the private industry group National Forum to Combat Piracy (FNCP) and Public Ministries in states throughout Brazil. ANVISA, which has previously concentrated on training enforcement officials, has recently made plans to address training of Federal judges. End Note.)

-- Internet Piracy

¶17. (SBU) Soares (CNCV) said that, although CNCV did not view internet crime in Brazil as a top priority due to low internet penetration rates in the country, CNCV has created a cyber-crime division. Brandelli (MRE) stated that CNCV will address internet piracy once its members raise the issue, which they have not done thus far. Vianna added that Brazil's low number of computers does not mean that the country is not concerned with internet crime. He

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noted that the GoB raised the issue at the Internet Governance Forum (IGF) Meeting in Rio de Janeiro in November 2007. Wilson noted the importance of considering the emerging threat of Internet piracy and the need to "get ahead of the curve" with regard to this problem.

-- Campus Copy-Shops

¶18. (SBU) Marcos Alves de Souza, General Coordinator for Copyrights at the Ministry of Culture, told Wilson that actual book piracy was rare in Brazil, but non-authorized copying of copyrighted works was common on university and college campuses. He said this activity was not organized-crime related. GoB believes that individuals have a right to access information and knowledge in the country, which is often difficult due to the high cost of books as a result of low production runs, according to Souza. He noted that academic books are very expensive, despite the fact that there are no federal taxes imposed on these items. Souza asserted that legal action by book publishers against professors and schools over illegal copying in 2006 -2007 led to a public backlash against IP laws.

¶19. (SBU) Brazilian copyright law allows for small segments of copyrighted works to be reproduced, but does not define what constitutes a small segment (reftel D). Souza said individual universities use in-house rules to police the amount of a publication that can be copied (ranging from 10 - 40 percent) or

limit copies to numbers of chapters. He relayed that the Ministry of Culture plans to hold a forum this year to allow input from a broad segment of society on the issue as it considers copyright law reforms. He felt authors were due remuneration for their work and said some ideas being considered were a collective management system or a tax on blank media and reproductive machines that could be used to recompense authors. The Ministry is also considering a system to allow small segments of books to be sold over the internet.

-- Patents and Trademarks

¶20. (SBU) Wilson noted that, while the USG has recognized Brazilian progress in the area of IPR enforcement, the U.S. remains concerned that progress has been less noticeable in areas related to patents, trademarks, and protection of pharmaceutical and agrichemical test data. Wilson acknowledged that INPI has taken steps to address a considerable backlog in patent and trademark applications, and requested information on progress achieved to date. He mentioned specifically the USG's ongoing questions about the unusual role of the Brazilian health regulator (ANVISA) in the process of considering pharmaceutical patents. With regard to compulsory licensing of pharmaceuticals, Wilson noted that the USG has sought to approach this delicate issue in a measured way, but continues to stress the importance of full and transparent engagement between the GoB and patent holders. Wilson also mentioned that the USG has questions and concerns with regard to Brazil's system of protecting data submitted in connection with the regulatory approval of pharmaceutical and agricultural chemical products.

¶21. (SBU) Gustavo Travassos Pereira, International Cooperation Advisor at the National Institute of Industrial Property (INPI) said his organization had formed a "dynamic partnership" with the U.S. Patent and Trademark Office (USPTO), which is providing training for INPI employees. According to him, INPI has doubled its trademark processing staff over the last year and tripled its patent processing staff. He also noted that INPI was in the final stage of implementation of the e-MARCAS system, which would allow for quicker trademark registration. The ANVISA official stated that ANVISA reviews (required for patent applications on certain products, including medicines) take no more than 120 days with only a 3 percent rejection rate per 2005 statistics.

-- Compulsory Licensing

¶22. (SBU) Leandro Teixeira, Health Regulation and Surveillance Specialist at ANVISA, said that after GoB ratification of TRIPS, the increased price of medicine impeded access to drugs for many Brazilians. He said that the GoB feels TRIPS "can and should" be interpreted so as not to harm public health projects and provide access to medicines for all. Brandelli called the compulsory licensing of the Merck anti-retroviral Stocrin an "unusual event" in Brazilian history and noted that the GoB has been obliged to provide HIV/AIDS victims free access to medications since 1986, and has 76,000 such patients (while Thailand has 17,000). He said that Brazil is one of the largest customers for these drugs, yet paid four times more for the drug than Thailand.

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¶23. (SBU) Without identifying Merck by name, Brandelli said negotiations between the GoB and the company had been transparent and failed to reach an agreement after six to seven months. At that point, after the company decided not to negotiate further, the GoB issued the compulsory license. He added that the drug's patent was one of over 400 that are considered pipeline patents, and, thus, it was already in the public domain when the patent was issued. Brandelli added that if the GoB had adhered to the letter of the TRIPS agreement, no patent would have been issued. He said the company (Merck) has been in Brazil for many years and the compulsory license has not affected the company's relationship with the GoB.

-- Data Package Protection

¶24. (SBU) In response to Wilson's question about industry allegations of lax data package protection, Teixeira (ANVISA) replied that this data had not been used to violate any patent

rights. He added that TRIPS was ambiguous on this point and he felt the GoB was acting within the TRIPS agreement in its handling of data packages.

Delegation Members

¶24. (SBU) Members of the delegations were:

U.S.

Chris Wilson, DAUSTR for Intellectual Property and Innovation

Katherine Duckworth, USTR Director for the Southern Cone

Dorian Mazurkevich, USPTO Attache, Consulate Sao Paulo

Tim Hall, Economic Officer, Embassy Brasilia (notetaker)

Brazil

- Ministry of External Relations (MRE):

Hadil da Rocha Vianna, Director of Department of Scientific and Technical Issues (DCT)

Otavio Brandelli, Director of Intellectual Property Division (DIPI)

Joao Carlos Beato Storti, Deputy Director, Intellectual Property Division (DIPI)

Fabio Alves Schmidt da Silva, Intellectual Property Division (DIPI)

- Ministry of Development, Industry and Trade:

Sancia Regina Magalhaes Ferrari, Trade Analyst and Acting Coordinator-General of the Inter-Ministerial Group on Intellectual Property (GIPI)

Carlos Alberto Alves de Oliveira, Trade Analyst

Jos Carlos Cavalcanti de Araujo Filho, Trade Analyst

- National Institute of Industrial Property (INPI)

Gustavo Travassos Pereira, International Cooperation Advisor

- Ministry of Culture:

Marcos Alves de Souza, General Coordinator for Copyrights (CGDA)

Samuel Barichello Conceicao, Assistant to General Coordinator for Copyrights (CGDA)

- Ministry of Agriculture:

Helinton Jose Rocha, Director of Department for Intellectual Technology and Agricultural Technology (MAPA)

Leontino Rezede Taveira, Department for Intellectual Technology and

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Agricultural Technology (MAPA)

Marcos Vinicius Leandro, Jr., Coordinator, Department for Intellectual Technology and Agricultural Technology (MAPA)

Luis Eduardo Rangel, Coordinator, Department for Intellectual Technology and Agricultural Technology (MAPA)

- Ministry of Health:

Joao Carlos Azuma, Managing Director of Department of Regulatory

Affairs

Ana Maria Tapajos, Head of Technical Analysis Division,
International Affairs Office

Daniela Lucia Loiola, Advisor

- Ministry of Justice:

Ana Lucia Moraes Gomes, Acting Executive Secretary of the National
Council to Combat Piracy (CNCB)

- Ministry of Culture:

Marcos Alves de Souza, General Coordinator for Copyrights

Samuel Braichello Conceicao, Assistant General Coordinator for
Copyrights

- Receita Federal (Brazilian IRS/Customs):

Frederico Emmanuel Vasconcellos, Head of the Division on Combating
Contraband and Customs Evasion

Jorge Luiz Alves Caetano, Coordinator of Research and Investigation

- Federal Police:

William Marcel Murad, Head of the Division on Combating Revenue
Crime

- Rodoviaria Federal (Brazilian Federal Highway Patrol):

Jose Altair Gomes Benites, Officer

Wellker Cesar Faria, Officer

Jetson Jose da Silva, Officer

- National Health Vigilance Agency (ANVISA):

Erika Mattos da Veiga, Specialist on Health Regulation and
Surveillance

Leandro Teixeira de Moraes, Specialist on Health Regulation and
Surveillance

Maristela Figueiredo de Almeida, Specialist on Health Regulation and
Surveillance

125. (U) THE DELEGATION HAS CLEARED THIS MESSAGE.

Sobel